

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.788 OF 2006

Shri Maruti Kalya Tambe ...Appellant
V/s.
Smt.Shantabai Vasudeo Parulekar & Anr. ...Respondents

Mr.N.V. Bandiwadekar for Appellant.
Mr.R.D. Sawant for Respondent No.1.

CORAM : V.M. KANADE, J.

DATED : 20th SEPTEMBER, 2007.

P.C:-

1. Heard learned counsel for the Appellant and learned counsel for the Respondent No.1.
2. Appellant takes exception to the order of the District Judge, Raigad in Civil Appeal No.34 of 2005 dated 28/04/2006, whereby his appeal was dismissed and order passed by the Trial Court was confirmed by the District Judge.
3. Brief facts are that the Appellant herein filed suit for declaration, partition and injunction in respect of suit properties. This suit was dismissed by the Trial Court. Against this order, he preferred an appeal and the lower Appellate Court dismissed the appeal and confirmed the

order passed by the Trial Court.

4. Learned counsel for the Appellant submitted that lower Appellate Court had not framed points for determination as required under the provisions of Order 41 Rule 31. He submitted that only point which was framed for determination was as to whether the Plaintiff established the case to claim relief as prayed in suit plaint para No.10. On the said point in cryptic manner the District Court has considered case of the Appellant without appreciating evidence on record. It is a well settled position in law that lower Appellate Court while exercising its appellate jurisdiction has to frame points for determination under Order 41 Rule 31. Order 41 Rule 31 reads as under:-

"Rule 31. Contents, date and signature of judgment.-

The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points for determination;
 - (b) the decision thereon;
 - (c) the reasons for the decision; and
 - (d) where the decree appealed from is reversed or varied,
the relief to which the appellant is entitled;
- and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

(A, AP, B, G, KNT, K, M, OR, P, RAJ)"

5. Perusal of Rule 31 discloses that an obligation is cast on the Appellate Court to frame points for determination and decide same points after appreciating evidence on record. It is no doubt true that such points need not be framed with mathematical precision and it is sufficient if the difference between the parties is noted in the points for determination and main issues are discussed and reasons are given in the finding arrived at by the Court on the points of issues between the parties. It is submitted that lower Appellate Court has not considered other issues which were involved in case and in a perfunctory manner dismissed the appeal. It is submitted that, therefore, said order is liable to be set aside. It is submitted that even otherwise the lower Appellate Court has not taken into consideration issue as to whether the application filed by the parties before the Revenue Authorities could be relied upon for the purpose of coming to the conclusion that there was partition between the parties. It is submitted that if a document is to be relied upon for the purpose of proving partition, then such document has to be registered under the provisions of Indian Registration Act. He submitted that this issue also was not considered.

6. Learned counsel for the Respondent No.1 vehemently opposed the submissions made by the Appellant herein. He submitted that if the lower Appellate Court had considered all these aspects, merely because points for determination was not framed, that cannot be ground for setting aside order passed by the Trial Court.

7. After having perused the judgment and order of the lower Appellate Court, in my view, the submissions made by learned counsel for the Appellant will have to be accepted. Though number of issues were framed by the Trial Court, none of these issues have been considered by the lower Appellate Court. It appears that even evidence adduced by the parties has not been discussed by the lower Appellate Court. Even when appeal is filed under order 41, the Appellate Court has to re appreciate evidence on record and then record finding. In my view, the District Court has exercised its jurisdiction perfunctorily. Impugned order, therefore, is liable to be set aside. Hence, the Judgment and order dated 28/04/2006 passed by the lower Appellate Court in Civil Appeal No.34 of 2005 is quashed and set aside. Matter is remanded back to the District Judge. District Court shall decide the Appeal as expeditiously as possible and in any case within a period of six months. All contentions of

the parties are kept open.

8. Appeal is allowed in the above terms and disposed of accordingly. In view of disposal of Appeal, nothing survives in the Civil Application and it is disposed of accordingly.

V.M. KANADE, J.